

Our File No. 0184.00037

2

09/280,283

--portion--. Accordingly, in order to further prosecution, these changes have been made in the claims.

Claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by the Errico et al patent. Reconsideration of the rejection under § 102 is respectfully requested.

The Office Action states that the Errico et al patent discloses in column 8, lines 1-3 and in figure 5a, a cylindrical insert having a base portion and a plurality of flexible arms. However, when read more specifically, the Errico et al patent states that "with specific reference to figure 5a, coupling element 132 comprises a cylindrical socket having external threading 134." While figure 5a does show arms, it also shows the threaded outer surface. It is this outer surface which is required for the insert to function. The design of the present invention as claimed in independent Claim 1 has a smooth wall which is thus very different in form and function to that of the Errico et al insert. Accordingly, since the Errico, et al patent does not disclosed a smooth walled cylindrical insert of the presently pending independent Claim 1, reconsideration of the rejection is respectfully requested.

Claims 2-8 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the Errico et al patent. Reconsideration of this rejection under 35 U.S.C. 102(e) in respect to the pending claims is also respectfully requested.

The Office Action states with respect to Claims 2-7 the Errico et al patent discloses in column 7, lines 27-42 and figures 6-9, a body member having a rod receiving means and internal portion with a stop means and a radially outwardly extending lip for retaining screw head and an insert and that the internal portion is recessed to allow expansion of the insert during insertion of the screw head. However, when read more specifically, the Errico et al patent discloses in line 61, a receiving portion into which the locking collar may be loosely disposed, this is not a recessed portion. This allows angulation of the screw head prior to locking. This is clearly described in column 7, line 65 wherein the patent states that "prior to the locking collar 150 in the head of the screw 122 being fully driven in the socket to a five, the

Our File No. 0184.00037

3

09/280,283

screw 120 maybe angulated relative to the locking collar 150..." Additionally, at column 8, line 4, the patent states that when the insert is fully driven into the receiving socket the linear taper of the interior surface of the axial bore provides the necessary inwardly directed radial force to cause the locking collar to crush lock the head of the screw. Section 205 is a tapered portion designed to exert pressure against the insert, in other words if 205 were recessed, the insert would never crush against the screw head lock and thus not function properly. Given this exclusive teaching, Errico et al patent does not disclose an insert which has a recessed portion as disclosed in the presently pending independent claims.

With respect to Claim 8, according the Office Action figure 8 and 9 illustrate the method of spinal rod fixation as claimed. However, the Errico et al patent shows an implant in figure 8 having a slot for the rod to fit within and figure 9 shows the nut engaged in the threads on the implant in figure 8. There is no depiction of any contouring of the two arms around the rod. Instead, the Errico et al patent requires a nut for all of the rod locking. Thus, in order for the Errico et al patent to function, the nut must be placed on the locking rod in order for the insert to function properly. This is not the case for the presently pending independent claim. Accordingly, since such a nut is not required by the presently pending independent claims, the claims are patentable over the Errico et al patent and reconsideration of the rejection is respectfully requested.

It is respectfully submitted that the present amendment places the application in condition for allowance as it removes all remaining issues of dispute. Specifically, the Amendment modifies the claims exactly as suggested in the Office Action, and amends the claims to specifically clarify what is being claimed. The application is made at least in better condition for appeal as the Amendment removes many issues thereby simplifying the issues on appeal. The amendments have been made in view of comments made in the Office Action which clearly distinguish the presently pending claims over the cited prior art. Hence, it is respectfully requested that the Amendment be entered.

Our File No. 0184.00037

4

09/280,283

The Amendment could not have been made earlier as the Amendment corrects inconsistencies which were set forth in the outstanding Office Action, the suggestion first being made in the outstanding Office Action. Hence, since there remains no further issues to be resolved, it is respectfully requested that the present Amendment be entered.

In conclusion, it is respectfully submitted that the present Amendment be entered in order to place the application in condition for allowance, which allowance is respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES

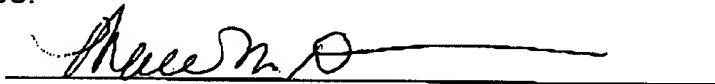


Amy E. Rinaldo
Registration No. P-45,791
30500 Northwestern Hwy. Ste. 410
Farmington Hills, Michigan 48334
(248) 539-5050

Dated: March 3, 2000

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being sent via facsimile to the Assistant Commissioner for Patents, Washington, D.C. 20231, Box Amendments, on March 3, 2000.



Marie M. DeWitt